1995

State of Utah v. Renald S. Hastie : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee, v. RENALD S. HASTIE, Defendant/Appellant.	*Priority No. 2* **Case No. 950630-CA**

BRIEF OF APPELLEE

DEFENDANT APPEALS FROM HIS CONVICTION FOR AGGRAVATED ASSAULT, A THIRD-DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-5-103 (Supp. 1995), ELUDING A PEACE OFFICER, A THIRD-DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-1a-1316 (1993), AND DRIVING WHILE UNLICENSED, A CLASS C MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 53-3-202 (Supp. 1995), IN THE SECOND JUDICIAL DISTRICT COURT FOR WEBER COUNTY, THE HONORABLE MICHAEL J. GLASSMAN, PRESIDING

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ORAL ARGUMENT AND PUBLICATION NOT REQUESTED

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee, v. RENALD S. HASTIE, Defendant/Appellant.	*Priority No. 2* **Case No. 950630-CA**

JURISDICTIONAL STATEMENT AND NATURE OF APPEAL

Defendant appeals his convictions for two third-degree felonies, one for aggravated assault and one for failure to respond to a peace officer, and a class C misdemeanor for driving without a license. This Court has original appellate jurisdiction under Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1995).

APPELLATE ISSUES AND STANDARDS OF REVIEW

1. Are Hastie's claims on appeal, other than his challenge to the court's jurisdiction, waived due to his failure to preserve them at the trial court? Although no standard of review is applicable because this issue did not come before the trial court, the State refers the Court to State v. Labrum, 881 P.2d 900, 903 (Utah App. 1994), cert. granted 892 P.2d 13 (Utah 1995), which

discusses in some detail the doctrine of waiver due to failure to preserve issues at trial.

2. Has defendant met his burden to disprove the absence of jurisdiction? Whether a court has jurisdiction is a matter of law that this Court determines on its own. State Department of Social Services v. Vijil, 784 P.2d 1130, 1133 (Utah 1989).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 76-5-103 (1995)

Utah Code Ann. § 76-5-102.4 (1995)

Utah Code Ann. § 76-1-201 (1995)

Utah R. Crim.P. 23 (1995)

STATEMENT OF THE CASE

Procedural History

On July 20, 1995, a jury convicted defendant of failing to respond to a peace officer, a third-degree felony, in violation of Utah Code Ann. § 41-1a-1316 (1993); aggravated assault, a third-degree felony, in violation of Utah Code Ann. § 76-5-103 (Supp. 1995); and failure to obtain a drivers' license, a class C misdemeanor, in violation of Utah Code Ann. § 53-3-202 (Supp. 1995) (R. 132). Defendant represented himself at the trial but had the assistance of an attorney,

Tony B. Miles, who made the opening statement and closing argument (R. 131-32). Neither one objected to the jury instructions nor requested lesser-included instructions (R. 447).

Defendant filed a motion to arrest judgment more than a month later, but the trial court denied it and sentenced defendant to two concurrent zero-to-five year sentences at the prison for the third-degree felonies and one concurrent three-month sentence for the misdemeanor (R. 188-89).

Statement of Facts

Defendant was a fugitive from justice with a warrant out for his arrest, when Officer Shane Miner of the Northern Utah Criminal Apprehension Team (NUCAT) saw him driving down Monroe Boulevard in Ogden on January 30, 1995 (R. 330). Because defendant was considered potentially violent, Officer Miner, who was driving an unmarked car, did not immediately arrest him, but followed him to a residence on the 2000 block of Adams (R. 331). Defendant got out of his car and went into the house and Officer Miner parked in a cemetery nearby to watch and call for backup (R. 331). Just a few minutes later, before backup arrived, defendant returned to his car and started driving, going east on 20th (id.). Officer Miner followed and was eventually joined by Officer Arthur Weloth of the Ogden City Police (R. 334). They decided that Officer Weloth, in

a marked car, should turn on his lights and siren and try to make a traffic stop (id.).

As soon as Officer Weloth turned on his red and blue lights, defendant accelerated from 35 mph to 45 mph (R. 367); when the officer turned on his siren, defendant sped up even more and, at one point, defendant was going 60 to 70 mph on Harrison Boulevard in afternoon, rush-hour traffic, weaving around cars, and going through at least half a dozen red lights and stop signs (R. 370).

Officer Jack Alexander of the Ogden City Police heard about the chase on his radio while patrolling around Weber State University (R. 405). Officer Alexander started in pursuit (id.). Officer Alexander was driving toward defendant on Harrison Boulevard in the opposing traffic lane and hoped that defendant would stop when he saw a police car in front of him (R. 407). Instead, as their cars came closer, defendant moved over to Officer Alexander's lane of travel (R. 409). When Officer Alexander swerved to get out of defendant's way, defendant would swerved back so as to still be directly headed toward the officer's lane (id.). This back-and-forth swerving continued several times (id.). When defendant's car was "inches, maybe a foot" from the officer's, Officer Alexander jerked his car to the right, hitting the curb to avoid colliding with defendant (R. 409-10). Because of the potential danger to the police and the

public, the duty lieutenant called off the chase (R. 411). Defendant drove away (R. 411).

Officer Miner drove to Karen Durham's home because he believed defendant might go there (R. 337). Because defendant was at the home, Officer Miner called for backup, put on his raid jacket and vest, and secured the outside of the home. When Officer Miner knocked on the front door, calling for defendant to come out, defendant tried to escape through the back door but was apprehended.

SUMMARY OF THE ARGUMENT

Because defendant failed to raise any of his appellate issues before the trial court, his appeal should be rejected on the long-standing principle that, unless a defendant preserves his challenges at trial, he cannot raise them on appeal. Even if this Court chooses to evaluate defendant's substantive issues, however, none of them have legal or factual merit; therefore, the appeal could also be rejected on substantive grounds.

Nevertheless, defendant challenges the trial court's subject matter jurisdiction, which can be raised at any time, and, therefore, must be reviewed on the merits. Because the trial court was a court of general jurisdiction, the law

presumes it had jurisdiction. Defendant has the burden to disprove it, which he cannot.

Even if this Court chooses to evaluate defendant's substantive issues, however, none of them have legal or factual merit; therefore, the appeal could also be rejected on those grounds.

ARGUMENT

I. DEFENDANT HAS WAIVED HIS RIGHT TO APPELLATE REVIEW BECAUSE HE FAILED TO OBJECT IN THE TRIAL COURT.[1]

On appeal, defendant makes several claims that he did not raise to the trial court before or during trial. This is a fundamental error that applies to all defendant's posited issues. Because he did not preserve his issues at trial, reviewing those claims on appeal would fly in the face of the long-standing principle that claims raised for the first time on appeal will not be heard absent plain error or exceptional circumstances. State v. Labrum, 881 P.2d 900, 903 (Utah App. 1994) (due to defendant's failure to object to jury instructions, "defendant will not now be heard to complain that the judge erroneously instructed the jury."), cert. granted 892 P.2d 13 (Utah 1995). Defendant has not

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[1] This point addresses a fundamental error in defendant's case that relates to all defendant's point headings, except the one relating to subject matter jurisdiction.

argued plain error or exceptional circumstances. He has, therefore, waived his right to challenge the court's actions on appeal. However, for the convenience of the Court, the State will address the merits of defendant's challenges.

II. DEFENDANT'S APPELLATE CLAIMS ARE WITHOUT MERIT AND SHOULD BE REJECTED.

A. The State was not restricted to charging defendant with assault on a peace officer, a class A misdemeanor, merely because the victim of defendant's aggravated assault happened to be a peace officer.[2]

Defendant asserts that his conviction for aggravated assault is fatally flawed because he was not properly charged with that offense. Brief of Defendant at 9. He claims that he should have been charged, and therefore convicted of, the allegedly more specific crime of assault on a peace officer, Utah Code Ann. § 76-5-102.4 (1995). The latter crime makes it a class A misdemeanor to assault a peace officer "with knowledge that he is a peace officer, and when the peace officer is acting within the scope of his authority as a peace officer." Id.

The State agrees with defendant that his conduct constituted an assault on a peace officer. Officer Alexander was driving a marked police car when

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[2] This issue corresponds to defendant's point one.

defendant tried to hit him; it was also evident that Officer Alexander was working within the scope of his authority by trying to stop defendant (R. 427-28 (defendant's testimony)). Nevertheless, the mere happenstance that defendant committed one crime in the course of doing another does not necessarily mean that the State can only charge defendant with the lesser-punishment crime. Taking defendant's argument to its logical conclusion means that a person who commits conduct constituting an aggravated assault could never be charged with that crime if the victim was an on-duty peace officer.[3]

In State v. Clark, 632 P.2d 841, 843-44 (Utah 1981), the Utah Supreme Court dealt with a similar argument from a defendant who asserted that he should have been charged with cruelty to animals, a misdemeanor, rather than theft of livestock, a felony, because "he could have been prosecuted 'under the same set of facts'" for the misdemeanor. The Court rejected this assertion, ruling that "[a]s long as the legislative classifications are not arbitrary, the fact that conduct may violate both a general and a specific provision of the criminal law does not render the legislation unconstitutional, even though one violation is subject to a

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[3] Defendant's logic apparently would prohibit aggravated assault charges against people who commit an "aggravated assault" against correctional officers, Utah Code Ann. § 76-5-102.6 (1995) or school employees, Utah Code Ann. § 76-5-102.3 (1995).

greater sentence." Clark, 632 P.2d at 844 (citing People v. Burns, 598 P.2d 351 (Colo. 1979).

Contrary to defendant's claims, it is not so clear that the "assault against a peace officer" statute is the more specific of the two statutes because it does not describe the precise conduct defendant committed, i.e., using a dangerous weapon, i.e., a car, likely to produce death or serious bodily injury. The "lesser" statute is more specific only in the sense that it covers peace officers; the aggravated assault statute, however, more specifically describes defendant's conduct.

B. The 1995 amendments to the aggravated assault statute were not applied to defendant; therefore, no ex post facto violation occurred.[4]

In 1995, the legislature amended section 76-5-103 to make it a second-degree felony when a person "intentionally causes serious bodily injury to another." Utah Code Ann. § 76-5-103(2) (Supp. 1995). Defendant claims that this amendment was applied to him and, therefore, caused a violation of the ex post facto clause. This claim is factually incorrect. The State charged defendant with a third-degree felony under the part of the aggravated assault statute not

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[4] This point corresponds to defendant's point two.

effected by the amendment, i.e., use of a dangerous weapon likely to produce death or serious bodily injury (R. 2). Utah Code Ann. § 76-5-103(3) (Supp. 1995). This charge was the basis for the jury's verdict, (R. 150), and defendant was sentenced in accordance with that verdict to a zero-to-five year term of imprisonment (R. 190). Thus, defendant was never subjected to the second-degree felony allowed by the amendment and the ex post facto clause was not violated.

C. Utah Code Ann. § 41-6-13.5 (1995) does not create a presumption of guilt.[5]

Defendant alleges that the following language in section 41-6-13.5 creates a presumption of guilt: "[a]ny operator who, having received a visual or audible signal from a peace officer . . . operates his vehicle in willful or wanton disregard of the signal . . . or who attempts to flee or elude a peace officer . . . is guilty of a felony of the third degree." Defendant is mistaken. The phrase "is guilty of" is merely a grammatical construction that explains the consequences of committing the previously-mentioned prohibited acts. It is legislative language that serves two purposes: it tells members of the public what will happen if they flee a peace officer **and** it tells the courts what penalty to impose **if** a person is

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[5] Corresponding to defendant's point three.

found guilty of committing those acts. The statute does not require the courts to presume guilt and leaves to the judiciary the duty to find guilt under constitutional standards.

D. The jury's instruction on "evidence" did not need to define the evidence that the jury had to rely on because other instructions spelled out the State's burden of proof.[6]

Defendant's fourth argument suggests that the trial court erred by failing to give a "burden of proof" instruction. This is not true. In fact, several jury instructions set out the State's "beyond a reasonable doubt" burden (R. 144, 147, 149, 150, 151, 154). The trial court also gave correct element instructions (R. 149-53).

III. THE DEFENDANT HAS NOT DISPROVED JURISDICTION AND THE DEFENDANT'S OWN TESTIMONY VERIFIES THAT THE INCIDENTS OCCURRED IN WEBER COUNTY.[7]

Courts of general jurisdiction are presumed to have jurisdiction and the person challenging it must disprove it. State Department of Social Services v. Vigil, 784 P.2d 1130, 1133 (Utah 1989). The trial court in this case is a court of

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[6] This point refers to defendant's point four.

[7] This point refers to defendant's point five.

general jurisdiction. Utah Const. art. VIII, § 5 (1984); Utah Code Ann. 78-3-4(1) (Supp. 1995). Defendant has not presented any evidence to disprove jurisdiction; indeed, his testimony confirms that all incidents occurred in Ogden, Utah, a part of Weber County and, therefore, within the geographical jurisdiction of Second Judicial District Court (R. 425-33).

CONCLUSION

Defendant's convictions should be affirmed.

ORAL ARGUMENT AND PUBLICATION NOT REQUESTED

The State does not believe oral argument would enhance the Court's decisionmaking process because the facts and legal precepts are straightforward. Additionally, the State does not believe publication would significantly further the development of the law or aid courts or practitioners.

RESPECTFULLY SUBMITTED THIS 15 day of ~~February~~ March 1996.

JAN GRAHAM
UTAH ATTORNEY GENERAL
James H Beadles
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Assistant Attorney General

CERTIFICATE OF MAILING

On the 15 day of ~~February~~ March 1996, I mailed, by U.S. Mail, postage prepaid, two (2) copies of this ***BRIEF OF APPELLEE*** to:

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James H Beadles

A D D E N D U M

76-1-201. Jurisdiction of offenses.

(1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) The offense is committed either wholly or partly within the state; or

(b) The conduct outside the state constitutes an attempt to commit an offense within the state; or

(c) The conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) The conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense, or the result which is such an element, occurs within this state. In homicide the "result" is either the physical contact which causes death, or the death itself; and if the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

76-5-102.4. Assault against peace officer.

Any person who assaults a peace officer, with knowledge that he is a peace officer, and when the peace officer is acting within the scope of his authority as a peace officer, is guilty of a class A misdemeanor.

76-5-103. Aggravated assault.

(1) A person commits aggravated assault if he commits assault as defined in Section 76-5-102 and he:

(a) intentionally causes serious bodily injury to another; or

(b) under circumstances not amounting to a violation of Subsection (1)(a), uses a dangerous weapon as defined in Section 76-1-601 or other means or force likely to produce death or serious bodily injury.

(2) A violation of Subsection (1)(a) is a second degree felony.

(3) A violation of Subsection (1)(b) is a third degree felony.

History: C. 1953, 76-5-103, enacted by L. 1973, ch. 196, § 76-5-103; 1974, ch. 32, § 10; 1989, ch. 170, § 2; 1995, ch. 291, § 5.

Amendment Notes. - The 1995 amendment, effective May 1, 1995, added "under circumstances not amounting to a violation of Subsection (1)(a)" to the beginning of Subsection (1)(b); substituted "A violation of Subsection (1)(a)" for "Aggravated assault" and "second degree" for "third degree" in Subsection (2); and added Subsection (3).

Rule 23. Arrest of judgment.

At any time prior to the imposition of sentence, the court upon its own initiative may, or upon motion of a defendant shall, arrest judgment if the facts proved or admitted do not constitute a public offense, or the defendant is mentally ill, or there is other good cause for the arrest of judgment. Upon arresting judgment the court may, unless a judgment of acquittal of the offense charged is entered or jeopardy has attached, order a commitment until the defendant is charged anew or retried, or may enter any other order as may be just and proper under the circumstances.